

Regular Session, 2009

HOUSE BILL NO. 439

BY REPRESENTATIVE ELLINGTON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AGRICULTURAL COMMODITIES: Requires country of origin labeling in retail and food service establishments for catfish products

1 AN ACT

2 To enact Subpart H of Part II of Chapter 30 of Title 3 of the Louisiana Revised Statutes of
3 1950, to be comprised of R.S. 3:4711 through 4719, relative to country of origin
4 labeling for catfish products; to require retail and food service establishments to
5 notify consumers of the country of origin of catfish; to provide for notification
6 requirements; to provide for definitions; to provide relative to advertising of catfish
7 products; to authorize the commissioner to regulate and inspect retail and food
8 service establishments; to provide for penalties; to provide for testing procedures; to
9 require a cooperative endeavor agreement; to authorize the commissioner to adopt
10 rules and regulations; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Subpart H of Part II of Chapter 30 of Title 3 of the Louisiana Revised
13 Statutes of 1950, comprised of R.S. 3:4711 through 4719, is hereby enacted to read as
14 follows:

15 SUBPART H. LOUISIANA CATFISH MARKETING LAW

16 §4711. Short title

17 This Subpart shall be cited as the "Louisiana Catfish Marketing Law".

18 §4712. Legislative findings

19 The legislature finds that aquaculture sales and consumption have increased
20 worldwide and that the use of antibiotics or chemicals not approved for use in food-

1 producing animals in the United States is permitted in aquaculture in other countries
2 and that consumers of aquaculture in Louisiana should be provided clear information
3 as to where the aquaculture product originates from to protect the health and welfare
4 of Louisiana consumers. The legislature further finds that food-misrepresentation
5 or the passing off of less expensive aquaculture products as pricier aquaculture
6 products to unknowing customers and retailers has become an issue in the
7 marketplace and is a deceitful practice. Consumers and retailers should be informed
8 of the country of origin and species of fish in the marketplace.

9 §4713. Definitions

10 As used in this Subpart, the following terms shall have the meanings ascribed
11 below:

12 (1) "Catfish" means only those species within the family Ictaluridae.

13 (2) "Catfish product" means any item capable of use as human food which
14 is made wholly or in part from any catfish or portion thereof, except products which
15 contain catfish only in small proportions or historically have not been, in the
16 judgment of the commissioner, considered by consumers as products of the United
17 States commercial catfish industry and which are exempted from definition as a
18 catfish product by the commissioner under such conditions as he may prescribe to
19 assure that the catfish or portions thereof contained therein are not adulterated and
20 that such products are not represented as catfish products. "Catfish product" shall
21 be deemed capable of use as human food unless it is denatured or otherwise
22 identified as required by regulations prescribed by the commissioner to deter its use
23 as human food, or unless it is naturally inedible to humans.

24 (3) "Commissioner" means the Louisiana Commissioner of Agriculture and
25 Forestry.

26 (4) "Department" means the Louisiana Department of Agriculture and
27 Forestry.

1 (5) "Direct retail sale" means the sale of catfish, catfish products,
2 siluriformes, or siluriforme products individually or in small quantities directly to the
3 consumer.

4 (6) "Distributor" means any person offering for sale, exchange, or barter any
5 catfish, catfish products, siluriformes, or siluriforme products destined for direct
6 retail sale in Louisiana.

7 (7) "Farm-raised catfish" means a catfish that has been specifically produced
8 in fresh water according to the usual and customary techniques of commercial
9 aquaculture and includes fillets, steaks, nuggets, and any other flesh from a
10 "farm-raised catfish".

11 (8) "Food service establishment" means a restaurant, cafeteria, lunch room,
12 food stand, saloon, tavern, bar, lounge, or other similar facility operated as an
13 enterprise engaged in the business of selling food to the public.

14 (9) "Label" means a display of written, printed, or graphic matter upon or
15 affixed to the container or wrapper in which catfish, catfish products, siluriformes,
16 or siluriforme products are offered for direct retail sale.

17 (10) "Labeling" means all labels and other written, printed, or graphic matter
18 upon a catfish, catfish product, siluriforme, or siluriforme product or any of its
19 containers or wrappers, offered for direct retail sale.

20 (11) "Menu" means any listing of food and beverage options for a diner or
21 customer to select from regardless of its form.

22 (12) "Person" includes any individual, partnership, corporation, and
23 association, or other legal entity.

24 (13) "Processor" means any person engaged in handling, storing, preparing,
25 manufacturing, packing, or holding catfish, catfish products, siluriformes, or
26 siluriforme products.

27 (14) "Producer" means any person engaged in the business of harvesting
28 catfish or siluriformes, by any method, intended for direct retail sale.

1 (15) "Product name" means the name of the catfish, catfish product,
2 siluriforme, or siluriforme product intended for retail sale which identifies it as to
3 kind, class, or specific use.

4 (16) "Retailer" means any person offering for sale catfish, catfish products,
5 siluriformes, or siluriforme products to individual consumers and representing the
6 last sale prior to human consumption and includes food service establishments unless
7 otherwise stated herein.

8 (17) "River or lake catfish" means a catfish that has been produced in a
9 freshwater lake, river, or stream but has not been produced according to the usual
10 and customary techniques of commercial aquaculture.

11 (18) "Siluriforme" means fish in the taxonomic order Siluriformes and
12 including those within the taxonomic families Siluridae, Clariidae, and Pangasiidae
13 and those commonly known as basa and tra.

14 (19) "Siluriforme product" means any item capable of use as human food
15 which is made wholly or in part from any siluriforme or portion thereof. "Siluriforme
16 product" shall be deemed capable of use as human food unless it is denatured or
17 otherwise identified as required by regulations prescribed by the commissioner to
18 deter its use as human food, or unless it is naturally inedible to humans.

19 (20) "Wholesaler" means any person offering for sale any catfish, catfish
20 products, siluriformes, or siluriforme products destined for direct retail sale in
21 Louisiana.

22 §4714. Notice of country of origin

23 A. All retailers of catfish, catfish products, siluriformes, or siluriforme
24 products shall notify consumers, at the final point of sale of the catfish, catfish
25 products, siluriformes, or siluriforme products to the consumers, of the country of
26 origin of the catfish, catfish products, siluriformes, or siluriforme products.

27 B. A retailer of catfish or catfish products may designate the catfish or
28 catfish product as having a United States country of origin only if:

1 (1) It is hatched, raised, harvested, and processed in the United States, in the
2 case of farm-raised catfish.

3 (2) It is harvested in waters of the United States or a territory of the United
4 States and is processed in the United States or a territory of the United States, in the
5 case of river or lake catfish.

6 C. The notice of country of origin for farm-raised catfish and river or lake
7 catfish shall distinguish between farm-raised catfish and river or lake catfish.

8 D.(1) Retailers shall notify consumers of the country of origin of the catfish,
9 catfish products, siluriformes, or siluriforme products by means of a label, stamp,
10 mark, placard, or other clear and visible sign on the catfish, catfish products,
11 siluriformes, or siluriforme products, or on the package, display, holding unit, or bin
12 containing the catfish, catfish products, siluriformes, or siluriforme products at the
13 final point of sale to consumers.

14 (2) If the catfish, catfish products, siluriformes, or siluriforme products are
15 already individually labeled for retail sale regarding country of origin, the retailer
16 shall not be required to provide any additional information to comply with the
17 requirements of this Subpart.

18 (3) The commissioner may require that any person that prepares, stores,
19 handles, or distributes catfish, catfish products, siluriformes, or siluriforme products
20 for retail sale maintain a verifiable recordkeeping audit trail that permits the
21 commissioner to verify compliance with this Subpart and any rules or regulations
22 promulgated hereunder.

23 E(1) No owner or manager of a restaurant that sells imported catfish shall
24 misrepresent to the public, either verbally, on a menu, or on signs displayed on the
25 premises, that the catfish is domestic.

26 (2) If the food service establishment offers for sale only catfish or catfish
27 products having a United States country of origin, they may notify consumers of this
28 information with a sign placed in a prominent location in the food service
29 establishment in lieu of disclosure on the menu.

1 (3) Signs notifying consumers of the sale of catfish or catfish products
2 having a United States country of origin shall be approved, as indicated by a stamp
3 or seal, by the department. Any liability arising from failure to disclose country of
4 origin shall remain with the wholesaler, retailer, or food service establishment.

5 F. Any distributor or wholesaler engaged in the business of supplying
6 catfish, catfish products, siluriformes, or siluriforme products to a retailer or food
7 service establishment shall provide information to the retailer or food service
8 establishment indicating the country of origin of the catfish or siluriformes or the
9 country of origin of the catfish or siluriformes used in making the catfish product or
10 siluriforme product. The information shall include certification of origin through a
11 state or federal agency that regulates the processing of catfish, catfish products,
12 siluriformes, or siluriforme products or through a federal agency that verifies catfish,
13 catfish products, siluriformes, or siluriforme products produced in countries other
14 than the United States that meet similar sanitation requirements.

15 G.(1) Advertising of any catfish, catfish product, siluriformes, or siluriforme
16 products shall notify consumers of the country of origin of the catfish, catfish
17 products, siluriformes, or siluriforme products.

18 (2) The term "catfish" shall not be used as a common name or used to
19 advertise, distribute, or label any other fish or fish product except for those species
20 defined as catfish in R.S. 3:4713(1) or catfish product in R.S. 3:4713(2).

21 (3) It is unlawful to use the term "catfish" in the advertising, distributing,
22 labeling, or selling of any of those species within the family of Siluridae, Clariidae,
23 and Pangasiidae or any other fish not defined as catfish in R.S. 3:4713(1) or catfish
24 product in R.S. 3:4713(2).

25 (4) The department and the Louisiana Restaurant Association shall employ
26 a marketing campaign that places an emphasis on highlighting the benefits of
27 patronizing Louisiana restaurants and eating domestic catfish.

28 H. The commissioner shall regulate and inspect retail and food service
29 establishments and shall have authority to enter the premises of any wholesaler,

1 processor, distributor, retailer, or any other person selling catfish, catfish products,
2 siluriformes, or siluriforme products in order to determine compliance with this
3 Subpart.

4 I. This Subpart shall not apply to catfish or catfish products exported out of
5 the United States.

6 §4715. Penalties

7 A. The commissioner shall notify, in writing, any retailer or food service
8 establishment in violation of this Subpart and shall give the retailer or food service
9 establishment three days to correct the violation. No penalties shall apply to any
10 retailer or food service establishment that corrects the violation within three days
11 from the date of notification by the commissioner.

12 B. In addition to any other civil or criminal penalties, any person who
13 violates any of the provisions of this Subpart or who otherwise misrepresents as
14 catfish any other fish or other fish product not defined as catfish in R.S. 3:4713(1)
15 or as catfish product in R.S. 3:4713(2) shall be punished by a fine of not more than
16 one thousand dollars. For a second offense, a person shall be punished by a fine of
17 not more than two thousand dollars. For any subsequent violations, a person shall
18 be punished by a fine of not more than five thousand dollars or by having the license
19 for the retail or food establishment suspended indefinitely or until such establishment
20 has corrected the violation, or both.

21 C. Any person against whom a complaint is made or who has been made
22 subject to a fine or license suspension as provided by this Subsection 1, may avail
23 themselves of a due process administrative hearing.

24 D. Any owner or manager of a restaurant who is found guilty of a violation
25 of this Section shall, upon a first offense, be fined one hundred dollars; upon a
26 second offense, be fined two hundred fifty dollars and upon a third or subsequent
27 offense, be fined one thousand dollars.

1 §4716. Disclosure

2 A. All distributors, processors, or wholesalers of catfish, catfish products,
3 siluriformes, or siluriforme products, distributing or selling catfish, catfish products,
4 siluriformes, or siluriforme products, shall provide information to each person, firm,
5 or corporation to whom they distribute or sell catfish, catfish products, siluriformes,
6 or siluriforme products for resale as to certification of origin in order to satisfy the
7 notification requirements of R.S. 3:4714(A).

8 B. All distributors, processors, or wholesalers of catfish or catfish products,
9 distributing or selling catfish or catfish products, shall provide information to the
10 commissioner or his representative, upon request, and to each retailer to which such
11 distributor, processor, or wholesaler distributes or sells catfish or catfish products as
12 to whether such product is farm-raised catfish or river or lake catfish. In addition,
13 any wholesaler or distributor shall provide his sales and purchases records of catfish,
14 catfish products, siluriformes, or siluriforme products upon request by the
15 commissioner.

16 C. The commissioner may disclose to the public the names and addresses of
17 businesses that purchase domestic or foreign catfish, catfish products, siluriformes,
18 or siluriforme products from wholesalers, distributors, and processors.

19 §4717. Testing

20 The commissioner shall have authority to enter the premises of any
21 wholesaler, distributor, or retailer to pull samples of catfish, catfish products,
22 siluriformes, or siluriforme products for laboratory testing to test for species
23 identification or any other testing as may be necessary to determine compliance with
24 this Subpart.

25 §4718. Rules and Regulations

26 The commissioner shall promulgate rules and regulations for the
27 administration and enforcement of this Subpart.

- 1 §4719. Cooperative endeavor agreement
- 2 The Department of Health and Hospitals and the Department of Agriculture
- 3 and Forestry shall enter into a written cooperative endeavor agreement authorizing
- 4 the Department of Agriculture and Forestry to perform inspections in order to
- 5 determine compliance with this Subpart.
- 6 Section 2. The implementation of this Act shall be contingent upon the availability
- 7 of funds appropriated or otherwise made available.
- 8 Section 3. This Act shall become effective on November 1, 2009.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ellington

HB No. 439

Abstract: Creates the La. Catfish Marketing Law which requires country of origin labeling in retail and food service establishments for catfish, catfish products, siluriformes, or siluriforme products.

Proposed law creates the La. Catfish Marketing Law which requires country of origin labeling in retail and food service establishments in order to provide clear information on the origin of aquaculture to protect the health and welfare of consumers.

Proposed law provides for definitions of catfish, catfish product, commissioner, department, direct retail sale, distributor, farm-raised catfish, food service establishment, label, labeling, menu, person, processor, producer, product name, retailer, river or lake catfish, siluriforme, siluriforme product, and wholesaler.

Proposed law requires all retailers of catfish, catfish products, siluriformes, or siluriforme products to notify consumers, at the final point of sale, of the country of origin of the product. Allows the retailer to designate the catfish or catfish product as having a U.S. country of origin only if:

- (1) It is hatched, raised, harvested, and processed in the U.S., in the case of farm-raised catfish.
- (2) It is harvested in waters of the U.S. or a territory of the U.S. and processed in the U.S. or a territory of the U.S., in the case of river or lake catfish.

Proposed law requires that the notice of country of origin for farm-raised catfish and river or lake catfish distinguish between the two.

Proposed law provides for consumer notification by retailers of the country of origin of catfish, catfish products, siluriformes, or siluriforme products by use of a label, stamp, mark, placard, or other clear sign on the catfish, catfish product, siluriforme, or siluriforme product, or on the package, display, or holding unit or bin containing the catfish, catfish product, siluriforme, or siluriforme product. Further provides that if the catfish, catfish

product, siluriforme, or siluriforme product is already individually labeled for retail sale regarding country of origin, the retailer is not required to provide any further information.

Proposed law allows the commissioner to require any person that prepares, stores, handles, or distributes catfish, catfish products, siluriformes, or siluriforme products for retail sale to maintain a verifiable recordkeeping trail for compliance verification.

Proposed law provides that no owner or manager of a restaurant that sells imported catfish shall misrepresent to the public, either verbally, on a menu, or on signs displayed on the premises, that the catfish is domestic. Further allows food service establishments serving only catfish or catfish products having a U.S. country of origin to notify consumers by means of a prominently placed sign in the food service establishment in lieu of menu disclosure.

Proposed law requires distributors or wholesalers who supply catfish, catfish products, siluriformes, or siluriforme products to retailers or food service establishments to provide information indicating the country of origin of the catfish or siluriformes or the country of origin of the catfish or siluriformes used in making the catfish product or siluriforme product. Additionally, requires that the information include certification of origin through a state or federal agency that regulates processing of catfish, catfish products, siluriformes, or siluriforme products or through a federal agency that verifies catfish, catfish products siluriformes, or siluriforme products produced in foreign countries that meet sanitation requirements similar to that of the U.S.

Proposed law provides for the advertising of catfish, catfish products, siluriformes, or siluriforme products to include the country of origin. Prohibits the use of "catfish" as a common name or to advertise, distribute, or label any other fish or fish product except those of certain species defined as catfish. Further provides that the department and the Louisiana Restaurant Association shall employ a marketing campaign that places an emphasis on highlighting the benefits of patronizing La. restaurants and eating domestic catfish.

Proposed law allows the commissioner to regulate and inspect retail and food service establishments. Additionally, authorizes the commissioner to enter the premises of any wholesaler, processor, distributor, retailer, or any other person selling catfish, catfish products, siluriformes, or siluriforme products to determine compliance with proposed law.

Proposed law provides for penalties imposed by the commissioner in writing to any retailer or food service establishment in violation of proposed law and allows three days to correct the violation without incurring a penalty. Additionally, for any person who violates proposed law a first offense shall be punishable by a fine of not more than \$1,000; a second offense shall be punishable by a fine of not more than \$2,000; subsequent violations shall be punishable by a fine of not more than \$5,000 or by having the license for the retail or food establishment suspended indefinitely or until the violation is corrected, or both. Proposed law also provides that any owner or manager of a restaurant who is guilty of a violation of the proposed law shall, upon a first offense, be fined one hundred dollars; upon a second offense, be fined \$250 and upon a third or subsequent offense, be fined \$1,000.

Proposed law requires all distributors, processors, or wholesalers of catfish, catfish products, siluriformes, or siluriforme products to provide country of origin information to each person, firm, or corporation to whom they distribute or sell catfish, catfish products, siluriformes, or siluriforme products for resale. Further requires all distributors, processors, or wholesalers of catfish, catfish products, siluriformes, or siluriforme products to provide information to the commissioner and to certain retailers indicating whether the product is farm-raised catfish or river or lake catfish.

Proposed law requires distributors or wholesalers to provide sales and purchases records of catfish, catfish products, siluriformes, or siluriforme products to the commissioner.

Proposed law authorizes the commissioner to enter the premises of any wholesaler, distributor, or retailer to pull samples of catfish, catfish products, siluriformes, or siluriforme products for laboratory testing to test for species identification or any other testing deemed necessary to determine compliance.

Proposed law requires the commissioner to promulgate rules and regulations for the administration and enforcement of proposed law.

Proposed law requires the Dept. of Health and Hospitals and the Dept. of Agriculture and Forestry to enter into a written cooperative endeavor agreement authorizing the Dept. of Agriculture and Forestry to perform inspections to determine compliance with proposed law.

Proposed law provides that the implementation of proposed law is contingent upon funds appropriated or otherwise made available.

Effective Nov. 1, 2009.

(Adds R.S. 3:4711-4719)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the original bill.

1. Prohibits a restaurant manager or owner from misrepresenting imported catfish as domestic.
2. Provides that the Dept. of Agriculture and Forestry and the Louisiana Restaurant Association shall employ a marketing campaign.
3. Provides for additional penalties.
4. Makes the implementation of the Act contingent upon the availability of monies.